

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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MARIA GRANCIO, individually, and in her	:
capacity as Executrix and Personal Representative	:
of the Estate of Nicholas P. Grancio,	:
	:
Plaintiff,	:
V.	:
	:
R. LINDLEY DeVECCHIO;	:
	:
CHRISTOPHER FAVO;	:
	:
UNITED STATES OF AMERICA.	:
	:
Defendants.	:
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CIVIL ACTION NO.
06 CV 0069 (FB)(CLP)

**DEFENDANT CHRISTOPHER FAVO’S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

PLEASE TAKE NOTICE THAT Defendant Christopher Favo (“Favo”), by and through undersigned counsel, will hereby move this Court for an order dismissing the First Amended Complaint (“Complaint”) as to Favo, pursuant to Federal Rule of Civil Procedure 12(b)(6), or, in the alternative, entering summary judgment on the Complaint in favor of Favo, pursuant to Federal Rule of Civil Procedure 56. The grounds for the motion to dismiss or, in the alternative, for summary judgment are fully set forth in the accompanying Memorandum of Law in Support of Defendant Christopher Favo’s Motion to Dismiss, or in the Alternative, for Summary Judgment, Rule 56.1 Statement of Defendant Christopher Favo, and Affidavit of Christopher Favo, sworn to January 17, 2007.

As discussed in the Memorandum of Law, the constitutional claims asserted against Favo in the Complaint should be dismissed under Rule 12(b)(6) because the allegations in the Complaint do not support a claim that Favo participated in any alleged constitutional violation with knowledge of facts that would render his conduct unlawful, and the Complaint fails to state any claim of constitutional deprivation against Favo as a matter of law. Further, even if the Complaint alleged a claim of constitutional deprivation, Favo is nonetheless entitled to qualified immunity. Alternatively, the Court should grant summary judgment under Rule 56 as to Favo because no genuine issue of material fact exists regarding the deprivation of any constitutional right by Favo or Favo's entitlement to qualified immunity. In addition, the common law state claims asserted against Favo in the Complaint are barred by the Federal Torts Claims Act. Finally, the constitutional claims against Favo are also barred by the statute of limitations. As a result, all of the claims asserted against Favo in the Complaint should be dismissed.

January 29, 2007

Respectfully submitted,

DEFENDANT,
CHRISTOPHER FAVO

By Michael G. Considine
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CERTIFICATION

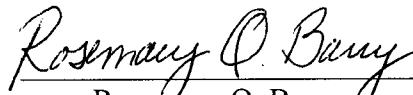
I hereby certify that on January 29, 2007, a copy of: Defendant Christopher Favo's Motion to Dismiss or, in the Alternative, for Summary Judgment; Memorandum of Law in Support of Defendant Christopher Favo's Motion to Dismiss, or in the Alternative, for Summary Judgment; Rule 56.1 Statement of Defendant Christopher Favo; and Affidavit of Christopher Favo, was served by email and by Federal Express delivery on the following counsel of record.

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